

Court of Appeals, State of Michigan

ORDER

People of MI v Donald Joseph Cook II

Docket No. 287064

LC No. 08-007535-01

Christopher M. Murray
Presiding Judge

Michael J. Talbot

Kurtis T. Wilder
Judges

In lieu of granting leave to appeal, pursuant to MCR 7.205(D)(2), the Court orders that the July 29, 2008, order of the Wayne Circuit Court that granted defendant's motion to quash the information and reduced the charge from first-degree murder to second-degree murder is REVERSED, and the charge of first-degree murder is reinstated. A witness described an initial confrontation between defendant and the victim, which the witness halted. After it was "quiet for a minute," talking resumed, and then a second confrontation, which culminated in the homicide, began. The interval between the first and second arguments provided an opportunity for defendant to form an intent to kill and to take a "second look" before acting. *People v Gonzalez*, 468 Mich 636, 641; 664 NW2d 159 (2003). Moreover, the large number of wounds (at least 134 stab wounds and 9 incised wounds) and their locations on the back, head, and front of the neck are a basis from which one may infer that the attack continued over an appreciable period of time. The 17 stab wounds to the chest that were inflicted after the victim's death show that defendant's attack continued after any fight between him and the victim had ceased. Cf. *People v Coy*, 243 Mich App 283, 315-316; 620 NW2d 888 (2000), noting as evidence of premeditation the presence of fatal stab wounds that "had to be late in the course of a struggle. Or after the subject was otherwise incapacitated." Because there was evidence from which the district court could infer premeditation and deliberation, the magistrate's judgment should not have been disturbed by the circuit court. *People v Johnson*, 427 Mich 98, 115-116; 398 NW2d 219 (1986). Therefore, the matter is REMANDED for further proceedings not inconsistent with this order. We do not retain jurisdiction. This order is to have immediate effect, MCR 7.215(F)(2).



A true copy entered and certified by Sandra Schultz Mengel, Chief Clerk, on

SEP 23 2008

Date

Sandra Schultz Mengel
Chief Clerk